(1)

89-1908

No.

In The
Supreme Court of the United States
October Term, 1989

ELMER FLEMINGS, HENRY McCOY and LEE H. REYNOLDS,
Petitioners,

against

HON. DAVID DINKINS, as Mayor of the City of New York, HON. LEE BROWN, as Police Commissioner of the City of New York and as Chairman of the Board of Trustees of the Police Pension Fund of the City of New York, the BOARD OF TRUSTEES OF THE CITY OF NEW YORK EMPLOYEES RETIREMENT SYSTEM and HON. KEVIN B. FRAWLEY, as Commissioner of Investigation of the City of New York,
Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

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QUESTIONS PRESENTED FOR REVIEW

1. Were petitioners' pension contract rights secured by Article I, Section 10 of the Constitution, impaired by a change in policy in the year 1978, when the Corporation Counsel of the City of New York, promulgated Opinion Number 44-79, that retired public employees, including New York City Police Officers, would have their pensions suspended and forfeit during the period of time of their service as New York City Marshalls, who are not employees of the City of New York and who draw no compensation from the City Treasury?

2. Does Section 1611 of the Civil Court Act of the State of New York impose an Unconstitutional discriminatory 3½ plus $1,500 gross receipts tax upon the income of only one class of citizen, to wit, New York City Marshalls, and thereby violate due process of law.

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CASES CITED

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PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

OFFICIAL AND UNOFFICIAL OPINIONS

On the 5th day of October, 1989, United States District Court Judge Dearie from the Eastern District of New York entered judgment on his decision, dismissing petitioners' complaint for failing to set forth facts constituting a cause of action. The case has not been officially reported to date. On the 19th day of March, 1990, the United States Court of Appeals for the Second Circuit issued its mandate, on its decision of February 26th, 1990, affirming the judgment of the district court.

JURISDICTION

Jurisdiction to review the determination is claimed under 28 U.S.C. 1254.

CONSTITUTIONAL AMENDMENTS

Article I, Section 10 and the Fourteenth Amendment to the Constitution are implicated in the petition for Certiorari.

STATEMENT OF THE CASE

I.

Petitioners are retired police officers, who were subsequently appointed New York City Marshalls, who work as independent contractors, collecting fees from judgment creditors for collection of judgments and from landlords for handling dispossess. Despite the official ring to the title, City Marshalls are not on any municipal payroll and receive no benefits, directly or indirectly from any Municipal Treasury.

Each of the petitioners became New York City Police Officers long before 1978, when during a period of financial crisis, efforts were made to economize. Thus, it has long been the law in New York City, that a city employee may not draw a pension and work for any other city agency simultaneously, known as double dipping. At the time of their appointment as New York City Police Officers, their pension expectancy entitled them to retire after twenty years of police work and to draw a pension, provided they not draw salary from any other municipal agency.

In 1978, the Corporation Counsel of the City of New York promulgated opinion letter 44-79, reciting that "fees

earned by City Marshalls constitute compensation from office within the meaning of (City) Charter Section 1117 and that a city retiree who becomes a City Marshall will have his retirement benefit, exclusive of any annuity, suspended and forfeited." The complaint charges that Opinion Letter 44-79 is in the nature of an executive order and not a judicial decision, and therefore, opinion letter 44-79 impairs the obligations of the City of New York to pay the pension promised to petitioners, pursuant to their initial employment as police officers.

Where an impairment of obligations of contract claim is raised, "unless the State, itself, is a contracting party . . . courts properly defer to legislative judgment as to the necessity and reasonableness of a particular measure." *Energy Reserves Group, Inc. v. Kansas Power and Light Co.*, 459 U.S. 400, 103 S.Ct. 697, 74 L.Ed.2d 569 (1983). In the case at bar, since an instrumentality of the State is a contracting party, such deference does not obtain. Indeed, where State action is implicated, whether by legislatire fiat or enforcement under color of state law, Federal relief is available for violation of Constitutional perogative. *Barrows v. Jackson,* 346 U.S. 249, 73 S.Ct. 1031, 97 L.Ed. 1586 (1953).

The district court relief upon *Tidal Oil Co. v. Flanaga,* and its holding that judicial reversal of a prior judgment does not fall within the proscription of the "impairment" clause. The district court referred to *Matter of Mesereaux v. McGuire,* 53 N.Y.2d 969 (1981), where the New York Court of Appeals upheld Opinion Letter 44-79, but strictly on State grounds, the Federal issue, not having been raised nor considered. It is true "that issues actually litigated in a state court proceeding are entitled to the same preclusive effect in a subsequent Federal Section 1983 suit as they enjoy in the courts of the State where the judgment

was directed." *Migra v. Warren City School District,* 465 U.S. 75, 104 S.Ct. 892, 79 L.Ed.2d 56 (1984). In *Lombard v. Board of Education,* 502 F.2d 631 (2nd Circ., 1974), the Court held that where the Federal question was not raised in prior State litigation, it is available for Federal determination, the issue always being "a question of whether the appellant has waived his Constitutional rights." Petitioners were not parties to the prior State determination, which did not turn on application of the "impairment" clause, but rather state statutory construction.

Article V. Section 7 of the New York State Constitution provides that "Membership in any pension or retirement system of the state or a civil division thereof shall be a contractual relationship, the benefits of which shall not be diminished or impaired." There are no adequate State grounds for avoiding the Federal "impairment" clause, since the State, itself, construes the pension benefit for its employees to be "a contractual relationship." The State argues that Section 1117 of the New York City Charter, promulgated in 1901, provides that the pension of any City employee shall be suspended while he "hold(s) and receive(s) any compensation from any office, employment, or position," with a municipality. The State then further argues that since 1901, Section 1117 of the City Charter authorized suspension of pensions for City employees, holding the office of City Marshall. Nothing can be further from the truth. Until 1979, over a period of seventy-eight years, not one City Marshall, who had been a former city employee, had suffered suspension and forfeiture of his city pension, by virtue of his appointment as a City Marshall. It was Corporation Counsel opinion 77-49 that authorized such suspension and forfeiture, not any judicial fiat nor prior legislative enactment. "A serious alteration of the terms of a contract resulting from state legislation is permissible if, but only if, the legislation

is necessary to meet a broad and pressing social or economic need, if the legislation is reasonably adopted to the solution of the problem involved, and if it is not overbroad or overharsh." *Allied Structural Steel v. Spannaus,* 438 U.S. 234, 98 S.Ct. 2716, 57 L.Ed.2d 727 (1978). No valid reason is offered for suspending the pensions of a handful of former police officers, who do not draw a penny in salary, nor accrue any additional pension benefits from the City of New York. Opinion 44-79 "simply does not possess the attributes of those state laws that in the past have survived challenge under the Contract Clause of the Constitution." *Marvel v. Danneman,* 490 F. Supp. 170 (Del., 1980). In *Marvel,* the Court struck down an effort to modify a pension plan that covered State judges, by increasing individual contributions. The court wrote that before impairment of a pension contract be tolerated, a showing must be made that the state's finances were in a precarious state, a showing that the State did not even offer to prove, and which surely cannot be made on a Rule 12 motion.

II

The second challenge was made by petitioners to Section 1611 of the Civil Court Act of the City of New York, which imposes a $1,500 annual fee upon City Marshalls, which on its face can possibly be justified, plus a 3½ percent annual gross receipts tax upon City Marshalls, which is not imposed upon any other professionals or other calling or occupation. This *gross* receipts tax must be paid, whether the City Marshall's business is profitable or not.

"A tax law that employed "suspect classifications," for instance, would not be tolerated, let alone deferred to." *Manufacturers' Hanover Trust Co. v. United States,* 578 F. Supp. 837 (S.D.N.Y., 1983). A handful of city marshalls are called upon to pay three and one half percent

gross receipts tax more than any other business person or enterprise in the City. "The Fourteenth Amendment does not require that the taxpayer receive a sound bargain or a strict *quid pro quo* in services provided for taxes paid; but it does prohibit the imposition of a tax when no benefits whatsoever are returned to the taxpayer or when the benefits are negligible." *Superior Oil Co. v. City of Port Arthur,* 553 F. Supp. 511 (E.D., Texas, 1982). "If the taxing power be in no position to render . . . services, or otherwise to benefit the person or property taxed . . . the taxation . . . partakes rather of the nature of an extortion than a tax." *Union Refrigerator Transit Co. v. Kentucky,* 199 U.S. 194, 26 S.Ct. 36, 50 L.Ed.2d 150 (1950). The argument in District Court that plaintiffs were aware of a gross receipts tax at the time they accepted the office of City Marshall is irrelevant. A discriminatory tax law is not cured by visibility. No showing was made of any benefit derived by City Marshalls from the additional gross receipts tax. Were a benefit to be claimed, it could not be resolved in a Rule 12 motion.

REASONS FOR GRANTING CERTIORARI

This case presents two important issues having far reaching consequences, for resolution, to wit, the extent with which a municipality may impair the obligations of a pension plan and the degree of toleration of a State taxing scheme, having impact upon a small, identifiable profession, without any additional benefit, accruing to such profession.

Respectfully submitted,

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APPENDIX A—MANDATE OF THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

UNITED STATES COURT OF APPEALS
for the
SECOND CIRCUIT

At a stated Term of the United States Court of Appeals for the Second Circuit, held at the United States Courthouse in the City of New York, on the 26th day of February one thousand nine hundred and ninety.

Present:
HONORABLE WILFRED FEINBERG
HONORABLE ROGER J. MINER
HONORABLE J. DANIEL MAHONEY
Circuit Judges

ELMER FLEMINGS, et al.,
Plaintiffs-Appellants,

-against-

HON. EDWARD I. KOCH, et al.,
Defendants-Appellees.

89-9143

Appeal from the United States District Court for the Eastern District of New York.

This cause came on to be heard on the transcript of record from the United States District Court for the Eastern District of New York, and was argued by counsel.

ON CONSIDERATION WHEREOF, it is now hereby ordered, adjudged and decreed that the judgment of said district court is AFFIRMED.

ISSUED AS MANDATE: March 19, 1990

UNITED STATES COURT OF APPEALS
FILED
FEB 26, 1990
ELAINE B. GOLDSMITH, CLERK
SECOND CIRCUIT

APPENDIX B—ORDER OF THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

UNITED STATES COURT OF APPEALS
for the
SECOND CIRCUIT

At a stated Term of the United States Court of Appeals for the Second Circuit, held at the United States Courthouse in the City of New York, on the 26th day of February one thousand nine hundred and ninety.

Present:
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Plaintiffs-Appellants,

-against-

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Defendants-Appellees.

89-9143

Appeal from the United States District Court for the Eastern District of New York.

This cause came on to be heard on the transcript of record from the United States District Court for the Eastern District of New York, and was argued by counsel.

ON CONSIDERATION WHEREOF, it is now hereby ordered, adjudged and decreed that the judgment of said district court is AFFIRMED.

1. Plaintiffs-appellants, six retired New York City police officers currently serving as New York City marshals, appeal from a judgment of the United States District Court for the Eastern District of New York, Raymond J. Dearie, J., dated October 5, 1989. The district court granted the motion of the municipal defendants-appellees for an order pursuant to Fed. R. Civ. P. 12(b)(6), dismissing the complaint for failure to state causes of action under the United States Constitution, art. I, §10 or under 42 U.S.C. §1983.

2. We affirm the judgment of the district court substantially for the reasons stated in Judge Dearie's memorandum and order, dated October 3, 1989.

s/ Wilfred Feinberg
WILFRED FEINBERG

s/ Roger J. Miner
ROGER J. MINER

s/ J. Daniel Mahoney
J. DANIEL MAHONEY
Circuit Judges

N.B.: *This summary order will not be published in the Federal Reporter and should not be cited or otherwise relied upon in unrelated cases before this or any other court.*

APPENDIX C—MEMORANDUM AND ORDER OF THE UNITED STATES DISTRICT COURT, EASTERN DISTRICT OF NEW YORK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

ELMER FLEMINGS, HENRY McCOY, LEE H. REYNOLDS, EDMUND SORGENTE, RONALD PAZANT and JAMES CHEATHAM,

Individually and on behalf of the class of retired New York City employees, eligible for pension vesting, who have been appointed City Marshalls and deprived of said vesting by virtue thereof, in violation of Article 1, Section 10 of the Constitution, prohibiting the State and its instrumentalities from impairing the obligations of contract, and individually and on behalf of the class of City Marshalls, discriminatorily taxed as a class for public purposes under color of Section 1611 of the New York Civil Court Act, in violation of due process of law and 42 U.S.C. 1983,

Plaintiffs,

-against-

HON. EDWARD I. KOCH, as Mayor of the City of New York, HON. BENJAMIN WARD, as Police Commissioner of the City of New York and as Chairman of the Board of Trustees of the Police Pension Fund of the City of New York, the BOARD OF TRUSTEES OF THE CITY OF NEW YORK EMPLOYEES RETIREMENT SYSTEM, HON. KEVIN B. FRAWLEY, as Commissioner of Investigation of the City of New York and HON. ROBERT B. ABRAMS, as Attorney General of the State of New York,

Defendants.

CV 89-717

DEARIE, District Judge.

Defendants move this court pursuant to Fed. R. Civ. P. 12(b)(6) for an order dismissing the complaint on the grounds that plaintiffs have failed to state a cause of action under the Contracts Clause, Article I, Section 10, of the United States Constitution or under 42 U.S.C. §1983. For the reasons that follow, the motion is granted and the complaint is dismissed in its entirety.

BACKGROUND

Plaintiffs are six former New York City police officers who are currently serving as city marshals. They raise two separate claims before this court. First, plaintiffs claim that New York City's withholding of their police department pension while they serve as city marshals violates the Contracts Clause, Article I, Section 10, of the United States Constitution. Second, plaintiffs claim that section 1611 of the New York City Civil Court Act, which sets forth annual fees that city marshals must pay, is an unconstitutional deprivation of the marshals' property without due process of law.

Plaintiffs' contracts clause claim arises from their membership in the New York City Police Pension Fund. Those contracts fall within the purview of Article V, Section 7 of the New York State Constitution, which states in pertinent part:

> Membership in any pension or retirement system of the state or of a civil division thereof shall be a contractual relationship, the benefits of which shall not be diminished or impaired.

Such contracts are, however, also subject to section 1117 of the New York City Charter. Section 1117 suspends and forfeits the pension of a former city employee if the retiree subsequently holds and receives any compensation from any office, employment or position with the city or state. The purpose of section 1117 is to prevent a retiree from drawing on his pension while simultaneously adding compensation derived from a different city job.

Section 1117 had not been applied to retired city employees working as city marshals until 1978, when the Deputy Director of the Bureau of City Marshals inquired of the City Corporation Counsel as to whether section 1117 should in fact cover city retirees who subsequently accept appointment as city marshals. In May 1979, Corporation Counsel Opinion No. 44-77 concluded that "fees earned by a city marshal constitute compensation from office within the meaning of Charter section 1117 and that a city retiree who becomes a city marshal will have his retirement benefit, exclusive of any annuity, suspended and forfeited."

Several marshals who had been receiving city pensions commenced an action in New York State Supreme Court challenging the new policy that was adopted as a result of the Corporation Counsel opinion. The marshals argued that their fees were paid not by the city, but rather by judgment creditors who utilized their services. Furthermore, they argued that the city does not allow marshals to participate in any New York City pension plan. Accordingly, the marshals claimed that they were independent contractors who did not receive compensation from the city or state within the meaning of section 1117. The Supreme Court, New York County, agreed and ruled that city marshals did not receive compensation from the city. However, the Appellate Division reversed this decision in *Matter of Mersereau v. McGuire,* 77 A.D.2d 849 (1st Dep't 1980), *aff'd,* 53 N.Y.2d 960 (1981).

The Court of Appeals in affirming the Appellate Division's ruling concluded that although city marshals are not city employees, they do receive compensation from the city as a result of fees they collect for serving the court's process and executing its mandates. The court further noted that the language of section 1117 made no

distinction as to the actual source of compensation, whether it be public monies or, in this instance, private funds expended by judgment creditors.

Plaintiffs who become marshals subsequent to the *Mersereau* decision, commenced this action raising for the first time a constitutional challenge to section 1117. This contrasts with the *Mersereau* plaintiffs, who merely argued that their compensation was not subject to the statute.

Plaintiffs' second claim challenges the constitutional legitimacy of annual fees which New York City imposes on city marshals. The fee, originally 2.75% of the marshals' gross earnings and an additional $1500 per year, was first enacted in a 1976 amendment to section 1610 of the New York City Civil Court Act. In 1979, section 1611 raised the fee to 3.5% of the marshals' gross earnings plus $1500 per year.

The legislative history of the fee indicates that it was originally enacted by New York City to offset the increased costs of the supervision and discipline of city marshals. Mayor Koch, in a letter supporting the bill, noted that increased supervision was necessary to "contribute to the substantial reform of a frequently criticized adjunct to the judiciary." He also stated that added supervision would "increase the accountability of marshals and improve public perception of their integrity."

The fee has been justified by noting that, in 1974, city-appointed marshals averaged greater than $70,000 per year while earning no income for the city and paying no licensing fees. However, plaintiffs argue that due to high overhead, many marshals failed to earn any net profits but are still required to pay a fee based on their gross intake.

Furthermore, except for an "improved public perception of their integrity," marshals receive no benefits or services in exchange for the fee.

DISCUSSION

A. Contracts Clause Claim

Defendants seek to dismiss the contracts clause claim on the ground that no existing contractual right has been impaired. Defendants argue that section 1117 was in full effect at the time plaintiffs became members of the retirement system and therefore was part of plaintiff's original contract and not a subsequent impairment. Defendants further argue that Corporation Counsel Opinion 44-77 does not violate the contracts clause since it is not a legislative action which impairs the obligation of a preexisting contract. These arguments are persuasive.

The Contracts Clause, Article I, Section 10 of the United States Constitution, provides that "No state shall . . . pass any . . . Law impairing the Obligation of Contracts . . ." As a threshold matter, to prove a contracts clause violation a plaintiff must demonstrate that a state law has operated as a substantial impairment of an existing contractual relationship.[1] *Allied Structural Steel Co. v. Spannaus,* 438 U.S. 234, 244 (1978). Furthermore, not all contract modifications are considered impairments which are significant enough to raise a successful contract clause claim. *See El Paso v. Simmons,* 379 U.S. 497, 506 (1964). In determining whether a viable claim is stated, courts must assess the reasonable expectations of the parties at the time they entered into the contract. *See Energy Reserves Group Inc. v. Kansas Power and Light Co.,* 459 U.S. 400, 416 (1983). It is only if these expectations are frustrated that a constitutionally significant impairment will exist. *Id.*

As stated, plaintiffs' contractual relationship with the Police Pension Fund is within the purview of Article V, Section 7 of the New York State Constitution which prohibits the impairment of the contractual relationship with the retirement system. However, such contracts are also subject to section 1117 of the New York City Charter, which calls for the retiree's right to receive retirement benefits to be suspended if the retiree subsequently receives compensation from the city or state. Since this section was in full effect at the time plaintiffs contracted with the Police Pension Fund, it is part of the original contract and therefore cannot be viewed as a subsequent impairment under relevant case law.

Furthermore, the inclusion of marshals under section 1117 is in no way a modification significant enough to be considered a constitutional impairment. Plaintiffs became marshals *after* Corporation Counsel Opinion No. 44-77 was issued and affirmed by the courts in *Mersereau*. Plaintiffs must have, at the very least, been on notice that section 1117 was to apply to them, and therefore suffered no significant contractual impairment.

Plaintiffs rely on *Allied Structural Steel Co. v. Spannaus*, 438 U.S. 234 (1978), where the Supreme Court held that a legislative enactment violated the contracts clause. However, *Allied Steel* is clearly distinguishable from the present case. The contracts clause challenge in *Allied Steel* concerned a legislative enactment which occurred subsequent to the formation of a contract. This case concerns a city charter section enacted prior to the formation of a contract and the subsequent executive and judicial interpretations of that section. Furthermore, the *Allied Steel* court strongly emphasized that the unexpected nature of the statute was largely determinative in finding a contracts clause violation. *See Allied Steel*, 438 U.S. at 246. This

greatly contrasts with the case at bar, where plaintiffs must have expected section 1117 to apply to them prior to their becoming marshals. Thus, the contracts clause claim must be dismissed.

B. *Due Process Claim*

Defendants seek to dismiss plaintiffs' cause of action alleging a viclation of due process under 42 U.S.C. §1983 on the ground that defendants did not deprive plaintiffs of any protected property interest. Defendants further argue that even if plaintiffs were deprived of a property interest, the claim should still be dismissed on the ground that a state may use its police power to regulate an industry, profession or calling without violating the due process clause.

To state a claim under 42 U.S.C. §1983, plaintiffs' complaint "must allege that the defendants deprived plaintiff of a right secured by the Constitution or laws of the United States and that such deprivation was committed by persons acting under color of state law." *Costello v. Town of Fairfield,* 811 F.2d 782, 784 (2d Cir. 1987) (citing *Gomez v. Toledo,* 446 U.S. 635, 640 (1980)). However, the range of interests protected by the Constitution is limited. *See Board of Regents of State Colleges v. Roth,* 408 U.S. 564, 570 (1972). "To have a property interest in a benefit, a person clearly must have more than an abstract need or desire for it. He must have more than a unilateral expectation of it. He must, instead, have a legitimate claim of entitlement to it." *Id.* at 577.

In the case at bar, plaintiffs have no legitimate claim of entitlement to the full amount of earnings they receive from their role as city marshals. In fact, plaintiffs cannot even claim to have a unilateral expectation of their full earnings. Plaintiffs became marshals well after section 1611 was enacted, and therefore they must have expected to pay the required fees.

An analagous situation arose in *Ervin v. Blackwell,* 733 F.2d 1282 (8th Cir. 1984), where the court held that maintenance costs deducted from the total earnings of a former prisoner enrolled in a work-release program could not be considered a legitimate claim of entitlement. The court relied on two main factors in arriving at its conclusion. First, the court noted that regulations had specifically conditioned participation in the program on payment of maintenance costs. *See Ervin,* 733 F.2d at 1286. Second, the court concluded that the carrying out of such conditions was not an arbitrary action of government which demanded due process protection. *Id.*

These factors are equally applicable in the current case. As previously noted, plaintiffs became marshals after the enactment of 1611. They knew that as marshals they would be obligated to adhere to the requirements of section 1611. Furthermore, the fees collected under section 1611 cannot be classified as an arbitrary action of government since they do help defray the costs of regulating the marshals.

Plaintiffs claim that section 1611 is actually a tax which in no way benefits them as city marshals and therefore violates their due process rights. However, in order for a state tax to violate the due process clause, there must be "such flagrant and palpable inequality between the burden imposed and the benefit received, as to amount to the arbitrary taking of property without compensation." *Dane v. Jackson,* 256 U.S. 589, 599 (1921). The benefits the marshals receive as a result of the section 1611 fees are an improved public perception as a result of increased supervision. Although this benefit is intangible, it cannot be classified as being so grossly inequitable to the burden imposed—$1500 and 3½% of gross earnings per year—as to be constitutionally significant.

Even if plaintiffs were able to show that they were deprived of an entitlement, their claim should still be dismissed since states have the power to legislate against what ey consider "injurious practices in their internal commercial and business affairs" without offending the due process clause. *Ferguson v. Skrupa,* 372 U.S. 726, 730 (1963). The only limit is that the state law must not conflict with either a federal law or a constitutional prohibition. *Id.* at 731. In this instance, the injurious practice that New York City wishes to regulate is the great potential for corruption which is present when city marshals operate without appropriate supervision. Whether the collection of fees from marshals is the best method of attaining this goal is not for the court to decide, since the Court is not to be concerned with the "wisdom, need or appropriateness of the legislation." *Id.* at 730.

As a result of these factors, plaintiffs' due process claim is dismissed.[2]

CONCLUSION

Defendant's 12(b)(6) motion to dismiss is granted in its entirety.

SO ORDERED.

Dated: Brooklyn, New York
October 3, 1989

s/ Raymond J. Dearie
RAYMOND J. DEARIE
United States District Judge

FOOTNOTES

1. However, even before reaching the question of whether there is a significant impairment, the Court notes that any impairment to existing contractual relationships must be the result of a legislative enactment subsequent to the making of the contract. *Barrows v. Jackson,* 346 U.S. 249, 260 (1953); *see generally, Allied Structural Steel v. Spannaus,* 438 U.S. 234 (1978). The contracts clause is not aimed at the decisions of courts or acts of administrative or executive boards or officers. *See Smith v. Sorensen,* 748 F.2d 427, 436 (1984) (citing *New Orleans Waterworks Co. v. Louisiana Sugar Refining Co.,* 125 U.S. 18, 30 (1888)). Since the Corporation Counsel is considered part of the executive branch, its opinions cannot be construed as violating the contracts clause.

This defeats plaintiffs' argument that it is the Corporation Counsel's 1978 interpretation of section 1117, and not section 1117 itself, which impairs their contractual relationship and thus serves as an alternative ground for dismissing the contracts clause claim.

2. Plaintiffs appear to claim that the fee requirements of section 1611 violate their equal protection rights. This claim is totally without merit. Unless laws "create suspect classifications or impinge on constitutionally protected rights," *San Antonio Independent School District v. Rodriguez,* 411 U.S. 1, 40 (1973), it must only be demonstrated that they bear "some rational relationship to legitimate state purposes." *Id.; cf. Dallas v. Stanglin,* 109 S. Ct. 1591 (1989). Since the Supreme Court has never classified a group such as city marshals as deserving of suspect status, a rational relationship between the means and ends of section 1611 is all that is constitutionally required. In short, there can be no question that the collection of fees pursuant to section 1611 is rationally related to the city's interest in supervising its marshals. Therefore, section 1611 does not violate city marshals equal protection rights.